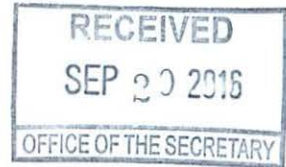


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

COPY

ADMINISTRATIVE PROCEEDING
File No. 3-16462



In the Matter of

LYNN TILTON;
PATRIARCH PARTNERS, LLC;
PATRIARCH PARTNERS VIII, LLC;
PATRIARCH PARTNERS XIV, LLC;
AND
PATRIARCH PARTNERS XV, LLC,

Respondents.

**DIVISION OF ENFORCEMENT'S
OPPOSITION TO RESPONDENTS'
MOTION *IN LIMINE* TO EXCLUDE
DIVISION EXHIBITS 71 THROUGH 73
(MS. TILTON'S TESTIMONY,
DECLARATION, AND AFFIDAVIT
FROM OTHER PROCEEDINGS)**

Introduction

The Division of Enforcement ("Division") respectfully files this opposition to Respondents' Motion *in Limine* to Exclude Division Exhibits 71 Through 73 (Ms. Tilton's Testimony, Declaration, and Affidavit from Other Proceedings) ("Motion"). These exhibits – which are prior sworn statements of Ms. Tilton – are admissible "for any purpose." *See* Am. Rule of Prac. 235(b). Moreover, Ms. Tilton's statements reflected in those exhibits are relevant to issues in the instant proceeding, including Respondents' role as collateral manager for the Zohar funds and their fiduciary duty to Zohar investors. For these reasons, Respondents' Motion should be denied.

Legal Standard

Under longstanding Commission precedent, law judges are to be inclusive in making evidentiary determinations. *See, e.g., City of Anaheim*, 54 S.E.C. 452, 454 & nn.5-7 (1999) ("Our law judges should be inclusive in making evidentiary determinations. ... '[I]f in doubt, let it in.'");

accord Charles P. Lawrence, 43 S.E.C. 607, 612-13 (1967) (“[A]ll evidence which ‘can conceivably throw any light upon the controversy’ should normally be admitted.”). Further, law judges should be particularly hesitant to exclude evidence on a motion *in limine*, doing so only when “the evidence is clearly inadmissible on all potential grounds.” *In the Matter of Morgan Asset Management, Inc.*, Admin. File No. 3-13847 (Sept. 7, 2010) (quoting *SEC v. U.S. Envtl., Inc.*, 2002 U.S. Dist LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)).

Argument

Respondents seek to exclude prior sworn statements of Ms. Tilton. However, as the Division has explained in prior papers, prior sworn statements of a party are admissible in this proceeding “for any purpose.” *See* Am. Rule 235(b); *see also* Div. Opp. to Resps.’ Mot. *in Limine* to Exclude Trans. of Inv. Test. (filed Sept. 9, 2016) at 3; Div. Opp. to Resps.’ Mot. *in Limine* to Exclude *Zohar* Trial Trans. (filed Sept. 12, 2016) at 3. Moreover, contrary to Respondents’ claims, those statements are not irrelevant to the issues in this proceeding.

Respondents first challenge the admission of Ms. Tilton’s testimony in a lawsuit involving MBIA, which insured and invested in two of the *Zohar* funds. Motion at 2-4. Among other matters, during the MBIA trial Ms. Tilton testified regarding the investment strategy of the *Zohar* funds, her fiduciary duty to noteholders, and the fund indentures. While the Division has not yet determined whether it will seek to admit all or part of Ms. Tilton’s MBIA trial testimony in this proceeding, making Respondents’ motion premature, the rules are clear that such testimony is admissible.¹

Alternatively, Respondents ask Your Honor to order the Division to identify, in advance of the hearing, the precise portions of the MBIA trial testimony it intends to use and the purpose for

¹ The Division may also need to use portions of the MBIA trial testimony to impeach or refresh the recollection of Ms. Tilton. Of course, the Division will not know whether it needs to use the testimony for that purpose until Ms. Tilton testifies during the hearing.

which it intends to use it. This request should be rejected. It is little more than a request for a preview of the Division's strategy in examining Ms. Tilton at the hearing.

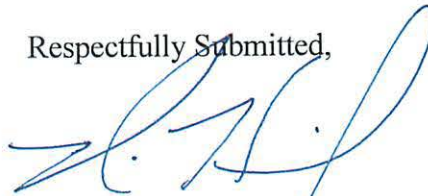
Finally, Respondents challenge the admission of an affidavit of Ms. Tilton's from the MBIA matter and a declaration of Ms. Tilton's from another matter styled *Schreiner v. Patriarch Partners, LLC*. Motion at 4-5. Respondents claim that these documents are "irrelevant and immaterial to the allegations in the OIP." *Id.* at 4. That is not the case. For example, in Ms. Tilton's affidavit in the MBIA matter, she discusses Patriarch's role as collateral manager for Zohar II, as well as the structure of the Zohar II CLO itself. *See* Div. Ex. 73 ¶ 2. Similarly, in Ms. Tilton's declaration in the *Schreiner* matter, Ms. Tilton discusses Patriarch's role and responsibilities as collateral manager. *See* Div. Ex. 72 ¶¶ 4-5. And in the MBIA affidavit, Ms. Tilton also discusses Patriarch's "fiduciary duty to Zohar II's investors." *See* Div. Ex. 73 ¶ 5. These matters are plainly relevant to the issues in this case.

Conclusion

For the foregoing reasons, Ms. Tilton's prior sworn statements should not be excluded. Respondents' Motion should be denied.

Dated: September 19, 2016

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTION *IN LIMINE* TO EXCLUDE DIVISION EXHIBIT 71 THROUGH 73 (MS. TILTON'S TESTIMONY, DECLARATION, AND AFFIDAVIT FROM OTHER PROCEEDINGS)** was served on the following on this 19th day of September, 2016, in the manner indicated below:

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(By Facsimile and original and three copies by UPS)

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Mail Stop 2557
Washington, D.C. 20549
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